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EXAMINER

WILLIAMS, JAMILA O

ART UNIT

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3722

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

SUPPLEMENTAL EXAMINER'S ANSWER

The following is a response to the Reply Brief and Declaration filed 12-18-2007.

The declaration is objected to since it appears to be associated with another case and examiner.

Appellant comments toward the double patenting rejection have been noted. As stated by the appellants, they are not contesting the double patenting rejection and have not submitted a Terminal Disclaimer to overcome the same.

As to the subject matter of the Declaration itself, the examiner responds as follows:

Regarding the statements towards "commercial success" there is no clear evidence in the Declaration that what was commercially successful was the specific product recited in the claims. For example, there is no evidence the product recited in claim 1 alone was the commercially successful product. Secondly, it is noted that appellant states that "the commercial success resulted from the inventive features of this invention and not from advertising or promotional efforts beyond standard efforts consistent with industry norms", however appellant does not provide any data showing exactly what standard efforts consistent with industry norms are or what advertising or promotional efforts were taken. Moreover, appellant does not provide any data to show that the numbers of the product sold were beyond what would have been expected as an industry norm.

Furthermore, the argument on page 2 after the table that begins with "It is important to note.." appears to be a little cryptic and cannot be fully understood. Appellant does not provide figures for boy's doll figures and therefore the examiner is left to rely only on those figures provided. Additionally it appears from the above noted paragraph that appellant appears to suggest that even the provided figures are not accurate.

As to the statements regarding copying of the invention by other toy manufacturers, appellant has provided no objective evidence of such copying in the Declaration.

For the reasons noted above, the appellant's Declaration, on balance, does not overcome the rejections for obviousness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMILA WILLIAMS whose telephone number is (571)272-4431. The examiner can normally be reached on Monday-Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W./
Examiner, Art Unit 3722

/Monica S. Carter/

Supervisory Patent Examiner, Art Unit 3722